

REMARKS

By the present amendment, claims 1, 3-6, 8, 10-11, 13-14, 16-17, and 19-20 are amended to clarify that the first and second cableways are rigid and have centerlines substantially coaxial with the first and second substantially parallel and non-coaxial axes. Claim 2 is canceled and the subject matter incorporated into claim 1. Claim 21 was previously canceled. This leaves claims 1 and 3-20 pending in the application, with claims 1, 10, 16 and 19 being independent.

Claims 1-7, 10-11, 13-14 are patentably distinguishable over U.S. Patent No. 5,156,454 to White by a light fixture foundation including cableway openings having laterally spaced rigid cableways on diametrically opposing sides of the hollow shaft. The cableways have centerlines extending therethrough along axes that are substantially parallel and non-coaxial with respect to one another.

Claims 1-20 are also patentably distinguishable over Hubbell Power Systems bulletin 2-9705 in view of U.S. Patent No. 5,039,256 to Gagliano by a light fixture foundation or a method of installing a light fixture foundation as recited. Specifically, with respect to apparatus claims 1 and 10, Hubbell Power Systems bulletin discloses only one cableway opening. Hubbell Power Systems bulletin does not disclose first and second cableway openings and/or first and second cableways. Moreover, Gagliano does not disclose two laterally spaced diametrically positioned cableways having centerlines disposed along first and second substantially parallel and non-coaxial axes.

With respect to method claims 16 and 19, Hubbell Power Systems bulletin does not disclose a method in which excavating a trench on opposite sides of the hollow shaft is required for accommodating two cableways. Additionally, Gagliano does not teach two cableways for supporting electrical wiring having substantially parallel and non-coaxial first and second axes. Furthermore, the first and second axes formed by the openings of Gagliano are not substantially

parallel to the longitudinal axis of the trench. Thus, these claims are patentably distinguishable over the cited prior art.

Claim Rejections – 35 U.S.C. 102

Claims 1-7, 10-11, 13-14 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,156,454 to White. White is cited for a light fixture foundation including a hollow shaft 12, cableway openings 14a, 14b capable of supporting electrical wiring 40, and a support member 22 for supporting a lighting assembly coupled to the shaft and having a passageway 26 in communication with the shaft. The Office Action includes a Figure in which two hypothetical axes (a and b) are drawn and depicted by dashed lines. The Office Action suggests that a plurality of axes can be drawn through the cableway openings in a plurality of directions.

Although, applicants' disagree with the above interpretation of White in the Office Action, independent claims 1 and 10 are amended to clarify that in addition to cableway openings, the present invention recites first and second rigid cableways. The cableways have centerlines disposed along the first and second substantially parallel and non-coaxial axes. In White, the axes of openings 14a, 14b are not substantially parallel, non-coaxial, and lateral offset on diametrically opposing sides of the hollow shaft. The axes of the diametrically opposed openings of White are coaxial, while the axes of the axes of adjacent openings are perpendicular. Thus, claims 1 and 10 are distinguished by the rigid cableways having centerlines substantially parallel and non-coaxial with respect to another. Lines (a and b) drawn on page 3 of the Office Action are not axes of the openings. Anticipation requires that every limitation of a claim must identically appear in a prior art reference. See Gechter v. Davidson, 43 U.S.P.Q.2d 1030, 1032 (Fed. Cir. 1997). Absence from the

prior art reference of any claimed element negates anticipation. See Rowe v. Dror, U.S.P.Q.2d 1550, 1553 (Fed. Cir. 1997).

In view of the above, White cannot anticipate or render obvious claims 1-7, 10-11, 13-14. Therefore, the rejection under 35 U.S.C. 102(b) should be withdrawn and the claims allowed.

Dependent claims 3-9 and 11-15 are also allowable for the same reasons. Moreover, these claims recite additional features distinguishable from the prior art. For example, claims 4 and 14 recite that the cableways are co-planar and claims 5 and 14 recite that the cableways are at the same vertical level with respect to the shaft. Also, claim 8 recites that the support member is a base plate having a width larger than the shaft diameter and includes first and second notches for indicating the location of the cableways. Claims 9 and 15 recite an anchor for supporting the shaft and support member. Claim 11 recites that the light support includes a passageway in communication with the passageway of the support member.

Claim Rejections – 35 U.S.C. 103

Claims 1-20 stand rejected under 35 U.S.C. 103 as being unpatentable over Hubbell Power System, Inc bulletin 2-9705 in view of U.S. Patent No. 5,039,256 to Gagliano. Hubbell Power Systems bulletin is cited for teaching the claimed invention, except for a hollow shaft having cableway openings formed on opposite surfaces of the hollow shaft being non-coaxial such that the cableways are laterally spaced from each other for receiving cables which do not interfere with one another. Gagliano is cited for teaching a foundation for anchoring in the ground comprising a hollow shaft extending along an inherent central longitudinal axis. A plurality of openings 4, 5 are cited for extending substantially perpendicular to the central axis of the hollow shaft, wherein the

openings include a first opening and second opening disposed on diametrically opposing sides of the hollow shaft (FIG. 1).

The openings of Gagliano are alleged to be substantially parallel and non-coaxial for preventing inserted tubular members 2 from interfering with one another. It is alleged that it would have been obvious to modify the Hubbell Power Systems foundation in view of the teachings of Gagliano to provide cableway openings in the Hubbell Power Systems bulletin foundation that would receive wiring without the wires interfering with each other.

Although, applicant disagrees with the above interpretation of Gagliano in the Office Action, independent claims 1, 10, 16, and 19 are amended to clarify that first and second rigid cableways are laterally offset and disposed on diametrically opposing sides of the hollow shaft, and the cableways have centerlines extending along first and second substantially parallel and non-coaxial axes.

A prima facie case of obviousness has not been established because (1) the proposed combination of the Hubbell Power Systems bulletin and Gagliano fails to teach or suggest all of the limitations of the claimed invention and (2) there is no motivation to combine the references. See MPEP 2143.

Admittedly, the Hubbell Power Systems bulletin fails to teach cableway openings of a light fixture foundation that define respective axes that are laterally offset, substantially parallel to one another or to the longitudinal axis of the trench, and spaced on diametrically opposing sides, as recited in amended independent claims 1, 10, 16 and 19. In fact, the Hubbell Power Systems bulletin only discloses one opening and requires excavation on only one side of the hollow shaft. Gagliano does not cure the deficiencies of the Hubbell Power Systems bulletin. Moreover, the guide sleeves 2 of Gagliano are not used for supporting wiring.

As discussed above with respect to independent claims 1 and 10, Gagliano fails to teach ~~cableways each having centerlines being disposed substantially parallel and non-coaxial with one~~ another. The Gagliano openings 4, 5 and guide sleeves 2 (not used for supporting wires) define centerlines which are substantially perpendicular to one another as seen in FIG. 1. Therefore, any obvious combination of the Hubbell Power Systems bulletin and Gagliano would not have all of the features of the claimed invention. Since the Gagliano guide sleeves and openings are not for wiring, Gagliano would not suggest mounting wire openings and cableways in the device of the Hubbell Power Systems bulletin.

Additionally, independent claims 16 and 19 each recite the step of inserting cableways into respective openings in the foundation shaft so that the openings are substantially parallel to each other and the longitudinal axis of the trench. In contrast, if the Hubbell Power Systems bulletin foundation could be modified to include the Gagliano openings 14, the centerlines of the cableways inserted into those openings 4, 5 would not be substantially parallel to one another because openings 4, 5 and guide sleeves 2 of Gagliano are angularly disposed relative to one another about the shaft. Consequently, the guide sleeves 2 are disposed perpendicular to one another, not parallel. Furthermore, the guide sleeves 2 are also perpendicular to a longitudinal axis of the trench, not parallel. Lastly, Gagliano does not suggest using the foundation with wires for a lighting fixture foundation as in the Hubbell Power Systems bulletin.

There is no motivation to combine the Hubbell Power Systems bulletin and Gagliano. The only suggested motivation is to prevent wires from interfering with one another. However, this suggestion is found only in Applicant's disclosure. Neither the Hubbell Power Systems bulletin nor Gagliano suggests preventing the interference of wiring or cabling. Any suggested motivation for

making the proposed combination must be found in the prior art, not in Applicant's disclosure. See In re Vaeck, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In view of the above, a prima facie case of obviousness has not been established since neither the Hubbell Power Systems bulletin, Gagliano or any obvious combination thereof teaches or suggests all of the limitations of independent claims 1, 10, 16 and 19. Also, no motivation exists to combine the Hubbell Power Systems bulletin and Gagliano. Therefore, the rejection under 35 U.S.C. 103 should be withdrawn and the claims allowed.

Dependent claims 3-9 and 11-15 are also allowable for the same reasons as discussed above with respect to independent claims 1 and 10. Moreover, these claims recite additional features distinguishable from the prior art. For example, claims 4 and 14 recite that the cableways are coplanar, and claims 5 and 14 recite that the cableways are at the same vertical level with respect to the shaft. Also, claim 8 recites that the support member is a base plate having a width larger than the shaft diameter and includes first and second notches for indicating the location of the cableways. Claims 9 and 15 recite an anchor for supporting the shaft and support member. Claim 11 recites that the light support includes a passageway in communication with the passageway of the support member.

Dependent claims 17, 18 and 20 are also allowable for the same reasons discussed above with respect to independent claims 16 and 19. Moreover, these claims recite additional steps not found in the prior art. For example, claims 17 recites that steps of releasably attaching a light support to the support member and electrically connecting the wiring of the cableways with a lighting unit supported by the light support. Also, claim 18 recites the step of excavating the trench so that the width of the trench is smaller than a width of the support member. Claim 20 recites that

Appl. No. 10/024,507
Amdt. dated 9/14/04
Response to 7/12/04 Office Action

step of aligning notches of the foundation indicating the relative positions of the first and second openings with the longitudinal axis of the trench prior to excavating the trench.

* * *

In view of the foregoing, claims 1 and 3-20 are in allowable condition. Prompt and favorable action is respectfully solicited.

Respectfully submitted,

Dated: Sep 15, 2004

Mark S. Bicks
Mark S. Bicks
Reg. No. 28,770

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036
Tel.: (202) 659-9076
Fax: (202) 659-9344